IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7144 of 1997

with

SPL. C. A. NOS. 7145 OF 97, 7146 OF 97, and 7147 OF 97

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 and 2 - Yes 3 to 5 - No

TEJAL SEJAL INDUSRIES

Versus

GUJARAT INDUSTRIAL DEVELOPMENTCORPN.

Appearance:

MR G.S. VYAS FOR MR. DN PANDYA for Petitioner

MR NV ANJARIA for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 08/10/97

COMMON ORAL JUDGEMENT

These four writ petitions raise common points and have been argued together by the learned counsel. These petitions are directed against the common judgement

and order dated 9.8.1997 passed by the learned Principal Judge of the Civil Court, Ahmedabad, dismissing the appeals of the petitioners which were filed under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1972.

The petitioners were allotted industrial sheds by the respondent No. 1 Corporation. They were required to abide by the terms and conditions of the allotment. According to the Corporation they committed breach of the terms and conditions in view of the fact that the instalments which were required to be paid by them were not paid and large amounts became due to be paid by these petitioners in respect of these sheds. Notices were therefore issued under Section 4(1) to these petitioners in the year 1995. Though the notices were not annexed with the petition, at the hearing the learned counsel for the petitioners has produced them. On perusal by the court, these notices indicate that the petitioners were informed that the amounts mentioned in the notices were lawfully due from them and that the petitioners had acted in contravention of the terms under which they were authorised to occupy the premises. The petitioners were called upon to show cause in writing within ten days from the date of service of the notice on them as to why proposed order of eviction should not be made against them in exercise of the powers conferred on the authority under the provisions of Section 5(1) of the said Act. The petitioners were also informed that if they so desire they could remain present for personal hearing by themselves or through their advocate in the office at the time and on the date indicated in the notices. It appears that thereafter eviction orders were passed against these petitioners on 25.9.1995 under the provisions of Section 5(1) of the said Act. Admittedly, as stated by the learned counsel for the petitioners none of these eviction orders were challenged by the petitioners. Thereafter, on 13.2.1997 the impugned action under Section 5(2) was initiated by the competent officer to take possession of the premises in question and the date and time for taking over the possession was fixed . It was recorded in these communications made under Section 5(2) that the petitioners had not handed over the vacant possession of the premises in question pursuant to the eviction orders made against them on 25.9.1997 and therefore the Assistant Manager was appointed to take over possession on the date and time mentioned and if it was not possible to resume the possession on the appointed day, he was authorised to evict the petitioners and take possession with or without force.

Though no appeal was filed against eviction orders made under Section 5(1) on 25.9.1995, the petitioners preferred appeal under Section 9(1) of the said Act against the so-called order dated 13.2.1997 which was, in fact, the notice to quit requiring the petitioners to hand over the possession on the appointed day in view of the eviction orders already made on 25.9.1995. These four appeals which were preferred by the petitioners were entertained by the learned Principal Judge of the City Civil Court under the provisions of Section 9(1) of the said Act. The learned Principal Judge dealing with all the contentions raised by the parties by a well reasoned judgement dismissed all the appeals. While considering the contentions as to whether notices under Section 4(1) were served on the petitioners he on the basis of the material on record, rightly came to the conclusion that the notices were duly served on them and they were given adequate opportunity of hearing during proceedings. The learned counsel for the petitioners, when asked, submitted that the petitioners did not send any written reply to these notices. He however submitted that they had made oral submissions before the concerned authority. It is clear from the record that notices under Section 4(1) were duly issued to the petitioners and they were given adequate opportunity of being heard in the matter and thereafter the eviction orders came to be passed on 25.9.1995 against these petitioners under the provisions of Section 5(1) of the Act. The petitioners never challenged these orders and therefore they became final. Since the petitioners did not challenge the eviction orders there was hardly any valid ground for them to challenge the impugned so-called order dated 13.2.1997 which was, in fact, a consequential action being taken against the petitioners to hand over possession pursuant to the eviction orders which they did not challenge.

It was contended on behalf of the petitioners by the learned counsel that the Principal Judge committed an error in holding that the respondent had rightly objected against maintainability of the appeals on the ground that no such appeals would lie against notices issued under Section 5(2), when the orders of eviction made under Section 5(1) were not challenged. Under Section 9 of the said Act an appeal lies from every order of the competent officer made in respect of any public premises under Section 5 or under Section 7 to an appellate officer. For an appeal under Section 5(1), the period of limitation of 15 days from the date of the service of the order made under Section 5(1) is prescribed while also empowering appellate officer to entertain the appeal

beyond that period if sufficient cause is shown for the delay. It was contended that while period of limitation was provided for challenging the order under Section 5(1), there was no period of limitation provided for challenging any order made under Section 5(2). This contention is wholly misconceived. Section 5 provides for eviction of unauthorised occupants. The eviction order is required to be made under Section 5(1). That is the order which is required to be challenged under Section 9 and if that order is not challenged and the person refuses or fails to comply with that order of eviction the possession can be taken over by use of force under Sub-Section (2) of Section 5. Therefore, that is purely a consequence of the eviction order which is made under Section 5(1). In fact, a notice under Sub-Section (2) of Section 5 even if termed as an order is only a process of implementing the eviction order which is made under Section 5(1) and if that order is not challenged then the ground which may be available for challenging that order under Section 5(1) would not be available to such unauthorised occupants for the purpose of resisting the competent officer who proceeds to take the possession under Sub-Section (2) of Section 5 pursuant to the eviction orders made under Section 5(1). Since the eviction orders made under Section 5(1) as far back as on 25.9.1995 against these petitioners were never challenged they became final and therefore the learned Principal Judge was right in holding that their challenge against the subsequent notice issued under Section 5(2) on 13.2.1997 could not be sustained.

Even while holding that the appeals of the petitioners against the notices issued under Section 5(2) for enforcing the eviction orders earlier made were not maintainable the appellate authority has gone into the contention on merits and found that the notices under Section 4(1) were duly issued and the petitioners were given adequate opportunity of being heard before making of the eviction orders under Section 5(1). It is also observed by him paragraph 11 of the judgement that suits were filed by the petitioners against the Corporation. We are not concerned with the other points such as that the petitioners were not given power supply in time as projected in the pamphlet at the time of allotment. The learned counsel contended that it was incumbent upon the respondent Corporation to have supplied electricity in time since while assuring insfrastructure the petitioners were assured that they would get power supply expeditiously. It was submitted that power supply was given only on 3.1.1991. It was also submitted that provisions of Section of Gujarat Industrial Development

Act, 1962 section 4 which deal with the constitution of the Corporation indicate, by virtue of inclusion amongst 12 Directors of one nominated by the State Electricity Board, that it was the duty of the Corporation to supply electricity in time. This would rather be a far fetched contention and it is not necessary to delve on it as it has no bearing on the present controversy.

The petitioners never challenged the eviction orders made on 25.9.1995 against them and none of the grounds which might have been available to them against the show cause notices issued under Section 4(1) or the eviction orders made under Section 5(1) on 25.9.1995 are available to the petitioners against the impugned notices under Section 5(2) seeking to dispossess the petitioners on the strength of the eviction orders which had become final.

Under the above circumstances, it is clear that there is no warrant for interfering with the impugned notice or the impugned appellate orders dismissing the petitioners' appeals. The appellate authority has acted in exercise of its jurisdiction lawfully and the impugned orders have been made for valid reasons warranting no interference by this court. All these petitions are therefore summarily rejected.

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